



REGULAR MEETING MINUTES

TOWN OF NORTH HAMPTON ZONING BOARD OF ADJUSTMENT Tuesday, July 24, 2007 at 6:00pm Mary Herbert Conference room

These minutes were prepared as a reasonable summary of the essential content of the meeting, not as a transcription. All exhibits mentioned in these minutes are a part of the Town Record.

Attendance

Members present: John Anthony Simmons, Chairman; Susan Smith, Jennifer Lerner and Richard Batchelder

Alternates present: Marc Lariviere arrived at 6:50pm.

Members Absent: Ted Turchan, Vice Chairman

Staff present: Richard Mabey, Building Inspector and Wendy Chase, Recording Secretary

Preliminary Matters; Procedure; Swearing in of Witnesses; Recording Secretary Report

Mr. Simmons convened the meeting at 6:30pm.

Mr. Simmons explained to the present applicants that he would be recusing himself from at least one case leaving only a four-member Board and offered them the opportunity to request a continuance for a chance at a full Board to hear their case.

Mr. Simmons reviewed the following correspondence:

- Rockingham Planning Commission NHARPC regional planning commission survey
- New Hampshire Office of Energy & Planning 2007 Fall Planning & Zoning Conference information
- North Hampton Conservation Commission letter to the ZBA (tabled from the June 26, 2007 ZBA meeting).

Mr. Simmons addressed the Conservation Commission letter, which was delivered to the members and the Planning & Zoning Administrator electronically. Mr. Simmons referred to the Board's Rules of Procedure Section III. D., which states *E-mail communication(s) or other form of electronic communication(s) shall not be deemed an official communication to the Board and are discouraged.* Ms. Chase was directed to explain to any person sending correspondence electronically that the Zoning Board does not accept electronic correspondence. Mr. Simmons explained that the provision was implemented because electronic mail is not always reliable and can not produce an original signature.

Mr. Simmons asked Ms. Chase to explain the abutter notification procedure for the record. Ms. Chase explained that all applicants are required to include in their abutter notifications both the Conservation Commission and Heritage Commission. A certified letter with a copy of the agenda attached is sent to both the Conservation Commission and Heritage Commission, which are both addressed to the Town Office's post office box. The certified letter is picked up by a staff member and placed in the Conservation and Heritage Commission's mailboxes.

Mr. Simmons moved and Mr. Batchelder seconded the motion to direct Ms. Chase to write a letter to the Conservation Commission and Heritage Commission instructing them of what the Zoning Board's procedure is of abutter notification and explain to them to contact the Zoning Board in writing if they do not receive their notification and to further explain that all that they will receive is a copy of the agenda that will notice for them whether or not the case involves any wetlands impact and if so they may go to the Town Office and request a copy of the application.

The vote was unanimous in favor of the motion (4-0).

Mr. Simmons moved and Ms. Smith seconded the motion to contact Mr. Ganotis, Chairman of the Conservation Commission, and invite him to a future Zoning Board meeting of his choice to discuss the substance of the e-mailed letter received by the Zoning Board dated June 25, 2007.

The vote was unanimous in favor of the motion (4-0).

Rules of Procedure

The Board discussed Section III. F. of the Rules of Procedure stating *all communications from an Applicant or interested person shall be available to members of the Board, by placement in the respective mailbox of each member at the Town Office, within twenty-four (24) hours of receipt by the Zoning Administrator.* The Board decided to amend the section to reflect Section V. G. stating that the Board should receive all evidence for a case no fewer than five (5) days prior to the hearing.

Mr. Simmons moved and Ms. Smith seconded the motion to amend section III.F. of the Rules of Procedure to reflect Section V.G. requiring all materials/evidence must be submitted to the Board members no fewer than five (5) days prior to the meeting.

The vote was unanimous in favor of the motion (4-0).

Ms. Chase reported that the agenda was properly and legally posted in the July 9, 2007 edition of the Hampton Union and posted at the Library, Town Clerk's Office and Town Office.

Minutes

Mr. Simmons was not in attendance at the June 26, 2007 meeting so he stepped down to allow the members to discuss the minutes of that meeting.

Ms. Smith assumed the Chair.

Ms. Smith moved and Ms. Lerner seconded the motion to table the meeting minutes of June 26, 2007 to next month's meeting. The vote was unanimous (3-0).

Mr. Simmons resumed the Chair.

Mr. Simmons swore in Witnesses.

Marc Lariviere entered the meeting.

Old Business

2007:01 – Electa N. Savage, 3 Boulders Cove, North Hampton, NH. Applicant requests a Variance from Article IV, Section 409.8.A and 409.9.A.2. to permit construction of a new 26 x 44, 1 ½ story single-family dwelling and septic system within 75 feet of the wetlands soil. (The dwelling to be 19-feet and the septic system to be 55-feet from the wetlands soil). Property location: 4 Boulders Cove, zoning district R-2, M/L 001-014. This case is continued from the February 20, 2007 meeting. The abutters were re-notified of this meeting.

In attendance for this application:

Attorney Bernard Pelech

Harry Savage, Applicant's son

Joseph Lavin, Builder

Attorney Pelech gave a brief history of events on the Savage application:

- The property lies within the Little Boars Head Village District therefore the applicant sought relief from LBH zoning ordinance VII K 1 "distance from wetlands" and VII L "fill" in order to erect a building and construct a septic within the wetlands buffer zone.
- The LBH ZBA denied the variances request on February 13, 2007.
- Attorney Pelech requested a rehearing on behalf of his client Electa Savage.
- The LBH ZBA sought a legal opinion from Attorney Charles Tucker who orally advised LBH that the lot was a "grandfathered" lot pursuant to RSA 674:39II.
- The LBH Building Inspector granted a building permit based on the Attorney's findings and the LBH ZBA denial to Mrs. Savage was considered null and void.

Mr. Simmons questioned why Attorney Pelech sought a variance request from the Zoning Board when LBH determined that the request was not needed. Attorney Pelech answered that it was the opinion of the Building Inspector, Richard Mabey to seek a variance request from the North Hampton Zoning Board of Adjustment.

Mr. Mabey explained that he did not agree with Little Boars Head ZBA's interpretation of RSA 674:39 II concerning this case. He explained that the only thing that is vested (grandfathered) is the subdivision lots; not what goes on the lots.

Attorney Pelech submitted the following evidence:

- A copy of an approved building permit dated November 24, 1989 for a three story house to be constructed on #4 Boulders Cove marked as exhibit A.

- Memorandum from Attorney Pelech in support of the application, copy of the LBH ZBA decision and a copy of RSA 674:39 II marked as exhibit B.
- A copy of wetlands application from NH Soil Consultants, Inc. for map 001 lot 014 marked as exhibit C.

Mr. Simmons suggested that the Board seek a legal opinion on what is required and what isn't because the Little Boars Head Building Inspector and Building Inspector Richard Mabey have two different opinions regarding seeking a variance.

Mr. Mabey explained that this Zoning Board does not have to rely on decisions made by the Little Boars Head Zoning Board, they can make their own independent decisions regardless of any other Board's decision. Mr. Mabey confirmed that he is not able to grant a building permit unless all approvals are met.

Attorney Pelech stated that Mrs. Savage purchased the land (4 Boulters Cove) in 1989. She currently lives across the Street at 3 Boulters Cove. Mrs. Savage has been paying taxes on the lot with an assessed value of a buildable lot for the past eighteen years. He further explained that Mrs. Savage wishes to build a handicapped accessible home on the lot to better meet her living needs.

Ms. Lerner questioned why the plans submitted (three story house) did not coincide with what the applicant was requesting (1 ½ story house). Attorney Pelech explained that the applicant intends to construct a two-bedroom 1½ story house with all living space on the first floor and apologized for the incorrect plan and confusion.

Ms Smith questioned whether or not there would be a foundation. The builder Mr. Lavin explained that there would be a knee wall and not a foundation due to the water table in that area.

The meeting was recessed at 7:30pm to change the video tape.
The meeting was reconvened at 7:32pm.

Mr. Simmons requested a chain of ownership of the proposed lot. Attorney Pelech said that Irene Carabelis purchased the lot in 1975, sold to Helen Savage in 1979 who sold it to Electa Savage in 1989.

Mr. Simmons stated that the Board received a letter from the Conservation Commission and commented that it was not on letterhead, not dated and not signed.

Mr. Simmons moved and Ms. Smith seconded the motion to direct Ms. Chase to write a letter to the Conservation Commission and Heritage Commission that when they receive notice and desire to submit a letter to the Zoning Board for its consideration that it must be submitted on Town letterhead, dated and signed by the Chairman or Acting Chairman or member authorized by that Board to send the letter and accompanying the letter a copy of the minutes of the meeting when the discussion took place.
The vote passed (4 in favor, 0 opposed and 1 abstention). Ms. Lerner abstained.

Mr. Simmons read the Conservation Commission comments into the record and asked if the Applicant was in receipt of a copy. Attorney Pelech stated that his client did not receive a copy of

the Conservation Commission comments and that if he were aware of the Commission taking up the issue at their meeting he would have attended their meeting.

Mr. Simmons opened the public meeting to those in favor of the application.

Mr. Lavin proposes to build the 1 1/2 story home if approved and spoke in favor of the variance request. He opined that Mrs. Savage has been paying taxes on the lot with an assessed value of a buildable lot for the past 18 years and has the right to build on it.

Mr. Simmons opened the public meeting to those opposed to the application.

There were no opposing comments.

Mr. Simmons closed the public session.

Attorney Pelech explained that the Applicant received State approval for construction of the house and construction of the septic but has not received an approved septic plan.

Mr. Simmons asked Mr. Mabey if he received a legal opinion from LGC. Mr. Mabey explained that he had and they had agreed with Mr. Mabey interpretation of the law and that the lot was not “grandfathered” from the wetlands setbacks. Mr. Simmons suggested that the Board obtain a legal opinion before continuing with this case.

Mr. Simmons voiced concerns on approving a variance where Little Boars Head Zoning Board did not require the applicant to request a variance.

Mr. Simmons moved that case 2007:01 be continued for thirty days and seek within that interim legal opinion from Town Counsel and/or the Local Government Center on what relief is required at the Town level and the Little Boars Head level.

Attorney Pelech objected to the motion and opined that Town Counsel can’t give an interpretation of Little Boars Head, Little Boars Head has already made their determination.

There was no second to Mr. Simmons motion. The motion failed.

Mr. Simmons again opined that continuing the case so that the Board could obtain a legal opinion was a legally prudent thing to do and that, because of the Board’s position to not do so, he would be abstaining from voting.

Case 2007:01 Electa Savage

Findings of Facts		Not Contrary to Public Interest		Unnecessary Hardship Exists		Consistent w/Spirit of Ordinance		Substantial Justice Will be Done		Will Not Diminish Surrounding Properties	
		YES	NO	YES	NO	YES	NO	YES	NO	YES	NO
	Simmons										
	Turchan										
	Lermer	x		x		x		x		x	
	Smith	x		x		x		x		x	
	Batchelder	x		x		x		x		x	
Alternate	Marston										
Alternate	Lariviere	x		x		x		x		x	
Alternate	Dupuis										

Ms. Smith moved and Ms. Lermer seconded the motion that case #2007:01 – Electa Savage, 3 Boulters Cove, North Hampton, NH be granted a variance from Article IV, Section 409.8.A and 409.9.A.2 to permit construction of a 22’x 44’ 1 ½ story single-family dwelling and septic system 75-feet within the wetlands soil. The dwelling to be 19-feet and the septic system to be 55-feet from the wetlands soil, property location 4 Boulters Cove, zoning district R-2, map and lot 001-014 with the following conditions: (1) the septic system to be designed for a two-bedroom home, (2) the driveway to be constructed with pervious material only, (3) a basement will not be constructed and (4) pending NH DES approval of the two-bedroom septic system. The vote passed (4 in favor, 0 opposed and 1 abstention). Mr. Simmons abstained.

Mr. Simmons advised Attorney Pelech to remind his client of the 30-day appeal period.

2007:16 Peter Horne, PO Box 224, Londonderry, NH 03053. The applicant requests a variance from Article V, Sections 501.2 and 501.5 for the purpose of razing an existing structure and replacing/rebuilding a structure on a non-conforming lot. Property Owner: Peter Horne, Trustee of the F.S. 123 Nominee Trust. Property location: 112 Mill Road, North Hampton, zoning district R-2, M/L 006-147-002. This case is continued from June 26, 2007.

In attendance for this case:
 Peter Horne, Owner/Applicant
 Attorney Bernard Pelech

Mr. Horne was sworn in as a witness.

Mr. Horne explained that he proposes to raze the existing garage and replace it with a new two-story structure and because it is a heated structure he intends to increase the square footage by 25% from the existing building. He further stated that the first floor would be the garage and the second story would consist of office space and recreation/storage space.

Attorney Pelech stated that if Mr. Horne added to the existing structure he would not need a variance to do so but because the existing foundation is not sound he would prefer to raze the existing building add a new foundation and build a new structure, which would require relief from Sections 501.2 and 501.5.

Mr. Lariviere commented that he had visited the site and voiced concerns of an existing sink and the drain to the sink that goes out of the back of the building very close to the pond. Mr. Horne informed the Board that he removed the sink and does not plan to add plumbing to the proposed new building.

Attorney Pelech went over the five criteria in support of the application.

Mr. Simmons recessed the meeting at 8:15pm – change video tape.
Mr. Simmons reconvened the meeting at 8:18pm.

Mr. Simmons opened the meeting to public comment for those in favor of the application. There was no public comment in favor of the application.

Mr. Simmons requested public comment for those opposed to the application. There was no public comment opposed to the application.

2007:16 – Peter Horne

Findings of Facts		Not Contrary to Public Interest		Unnecessary Hardship Exists		Consistent w/Spirit of Ordinance		Substantial Justice Will be Done		Will Not Diminish Surrounding Properties	
		YES	NO	YES	NO	YES	NO	YES	NO	YES	NO
	Simmons	x		x		x		x		x	
	Turchan										
	Lermer	x		x		x		x		x	
	Smith	x		x		x		x		x	
	Batchelder	x		x		x		x		x	
Alternate	Marston										
Alternate	Lariviere	x		x		x		x		x	
Alternate	Dupuis										

Mr. Batchelder moved and Ms. Lermer seconded the motion that case 2007:16, Peter Horne be granted a variance to Article V, Sections 501.2 and 501.5 for the purpose of razing an existing structure and replacing/rebuilding a structure on a non-conforming lot at 112 Mill Road zoning district R-2, Map & Lot 006-147-002.

**Mr. Simmons made a friendly amendment to add that any plumbing within the building will not be used without further approval from the Building Inspector for proper permits. Mr. Batchelder and Ms. Lermer accepted the friendly amendment.
The vote was unanimous in favor of the motion (5-0).**

2007:14 – Jarrod Patten, 1 Fern Road, North Hampton. The applicant requests a variance from Article IV, Section 409.9.B.1 to construct a garage within 50' of the wetlands setback. Property location: 1 Fern Road, North Hampton, zoning district R-1, M/L 008-023. This case is continued from June 26, 2007.

In attendance for this application:

Jarrold Patten, Owner/Applicant

Mr. Simmons recused himself from case 2007:14.

Ms. Smith assumed the Chair.

Mr. Patten reminded the Board that he was recently before them at the May 22, 2007 meeting for a variance request to install an in-ground swimming pool and deck within the wetlands setback and was granted that request. He further explained that he was back before the Board using the same testimony used in May to request another variance to build a garage within the 50-foot wetlands setback. Mr. Patten argued that the existing wetlands on his property was man made by Mr. Sanderson who testified at the May meeting confirming that the sand piles he placed on the property resulted in the man made wetlands. Mr. Lariviere also confirmed that to be true because he worked for Mr. Sanderson at that time.

Ms. Smith opened the meeting to public comment for all those in favor of the application. There was no public comment in favor of the application.

Ms. Smith requested comment for those opposed to the application. There was no public comment in opposition to the application.

Ms. Smith read written comments from the Conservation Commission into the record and asked if Mr. Patten had received a copy.

Mr. Patten did not receive a copy of the written comments from the Conservation Commission and stated that he objected to the comment made that there would be potential adverse impact to surrounding wetlands.

Ms. Smith stated that she visited the property and witnessed the piles of loam on the property that Mr. Patten explained caused the man made wetlands. She also stated that there was no standing water on the property.

Ms. Lermer moved and Mr. Lariviere seconded the motion that all five criteria of the findings of fact have been met by the applicant.

The vote was unanimous in favor of the motion (4-0).

Ms. Lermer moved and Mr. Batchelder seconded the motion to grant the variance from Article IV, Section 409.9.B.1 to construct a garage within 50-feet of the wetlands setback for case #2007:14, Jarrod Patten.

The vote was unanimous in favor of the motion (4-0).

Mr. Simmons resumed the Chair.

2007:17 - Sean Loeffler – 49 Walnut Ave, North Hampton. The applicant requests a special exception for a home occupation. The applicant proposes to a construction business (administrative only) out of his home. Property Owners: Sean and Marie Loeffler. Property location: 49 Walnut Ave, North Hampton, zoning district R-3, M/L 018-056.

Present for this application:

Sean Loeffler, Owner/Applicant

Mr. Simmons recused himself.

Ms. Smith assumed the Chair.

It was determined that Ms. Chase, the Planning and Zoning Administrator, noticed the application incorrectly.

It was suggested by the Board that the case be re-noticed correctly at no cost to the Applicant and the case continued to the August 21, 2007 meeting.

Ms. Smith moved and Mr. Batchelder seconded the motion to continue case #2007:17 to the August 21, 2007 meeting.

The vote was unanimous in favor of the motion (4-0).

Other Business

Ms. Chase informed the Board that decision letters have not been recorded at the registry of deeds as voted on by the Zoning Board on March 16, 2005. She further informed them that after speaking with the Town Administrator it was determined that only the Board of Selectmen has the authority to set fees within the Town Boards.

Mr. Simmons moved and Ms. Smith seconded the motion that the Board require future applicants to record their decision letter at the Rockingham County Registry and to instruct Ms. Chase to communicate this to the Board of Selectmen so that so that they can establish a fee for the recordings and upon Board of Selectmen approval all future applicants be charged the amount set by the Board of Selectmen.

The vote was unanimous in favor of the motion (5-0).

Ms. Chase informed the Board that a request for rehearing was submitted on the Salomon case #2007:12 and that the Board may wish to change the regular meeting date so that they may combine the decision to the request for rehearing with the regular meeting so to meet the 30-day rehearing decision deadline and not have to meet twice in one month.

Mr. Simmons recused himself from the discussion.

**Ms. Smith moved and Ms. Lerner seconded the motion to change the August Zoning Board meeting date from August 28, 2007 to August 21, 2007.
The vote was unanimous in favor of the motion (4-0).**

A motion was made and seconded to adjourn at 9:35pm with all in favor.

Respectfully submitted,

Wendy V. Chase
Recording Secretary